

# Congress Considers Overriding the Endangered Species Act to Give Drought Aid to California Farmers

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**John R. Weinberger, October 27, 2015**

Congress is reacting to California's fourth consecutive year of drought with competing bills representing starkly different policy priorities. H.R. 2898 passed by the House and awaiting action in the Senate would override the Endangered Species Act and the San Joaquin River Restoration Settlement Agreement in order to deliver more water to Central Valley farm fields from the Sacramento-San Joaquin River Delta. The alternative bill, S. 1894 authored by Sen. Dianne Feinstein (D-CA) seeks to expand California's water supply through water recycling, desalination, storm-water capture and agricultural conservation strategies. The Feinstein bill, which has not yet been brought up for a vote in the Senate, would preserve minimum flows on the San Joaquin River to the Delta and into the San Francisco Bay in order to support the ecological and environmental health of the Delta.

The Sacramento-San Joaquin River Delta is the heart of California's water supply. Half of all the state's freshwater flows through the Delta fed by rivers, streams and tributaries in the Sierra Nevada Mountains. Water from the Delta is pumped through a network of canals serving 1.1 million acres of farm land in the Central Valley and 23 million people in Southern California and the San Francisco Bay area. The diversion of more than 6 billion gallons per day out of the Delta results in the intrusion of salt water from the San Francisco Bay causing drinking water contamination and the destruction of natural habitats for native wildlife. The Delta Smelt, considered by scientists to be a key indicator species for the health of the Delta ecosystem, has been driven to the brink of extinction.

Thanks to the Central Valley Project - a system of pumps, dams and canals that sends San Joaquin River water to Central Valley farm fields - California's Central Valley is one of the most productive agricultural areas in the world, producing half of the nation's fruits and vegetables on 1% of the nation's farm land. The heart of the policy conflict in Congress with respect to the Delta is whether California can afford to allow a portion of the San Joaquin River to flow to the Delta in order to support endangered species. Water allowed to flow through the length of the river would otherwise be pumped to Central Valley farms. Prior to 2006, virtually all of the San Joaquin River was allocated to irrigation, leaving only a trickle to flow to the Delta and ultimately into San Francisco Bay. So much of the San Joaquin was allocated to Central Valley farms that the river virtually ran dry resulting in severe damage to natural ecosystems.

The question of whether the State of California and the Federal government are legally required to maintain adequate flows for species protection under the Endangered Species Act was the subject of 18 years of litigation ending in 2006 with the San Joaquin River Restoration Settlement. The Settlement requires state and federal agencies to allow Interim Flows and Restoration Flows in order to restore and maintain self-sustaining fish populations in the San Joaquin River. In the interest of farmers, the Settlement demands that state and federal agencies minimize adverse water supply impacts to Central Valley irrigation districts caused by the Interim Flows and Restoration Flows.

Even now, under the San Joaquin River Restoration Settlement, only about 50% of the San Joaquin River flows to the Delta. But every drop of the San Joaquin is coveted by drought stressed farmers. From agricultural perspective, any San Joaquin water allowed to flow freely for environmental and ecosystem protection is a loss of water that could otherwise be used to irrigate fields.

### The House Bill

The underlying premise of the House bill is that water scarcity in the Central Valley is caused, not by drought, but by environmental policy. Rep. Devin Nunes (R-CA) and House Natural Resources Committee chairman Rob Bishop (R-UT) both have characterized the water shortage in California as a government created problem resulting from endangered species protection rather than from drought exacerbated by climate change. HR 2898, sponsored by Rep. David Valadao (R-CA) who represents a portion of California's Central Valley, would repeal the San Joaquin River Restoration Settlement in order to make the entire river available for irrigation without reserving water for healthy river ecosystems.

In addition to repealing the San Joaquin River Restoration Settlement, the House bill would override Biological Opinions that federal wildlife experts have painstakingly developed over a period of years pursuant to the Endangered Species Act to guide the government's operation of locks and dams to help ensure the survival native California wildlife. These Biological Opinions have survived court challenges and have been upheld in a final decision by the U.S. Court of Appeals for the Ninth Circuit.

### The Feinstein Bill

The Feinstein bill takes an entirely different approach to the drought. Rather than subtracting water from environmental needs and reallocating it for agriculture, S. 1894 focuses on expanding the water supply through water reuse, desalination, storm water capture and urban and agricultural conservation strategies.

The bill authorizes \$200 million for water recycling and reuse projects. In addition the Feinstein legislation encourages agricultural conservation and groundwater recharge by directing federal agencies to pay farmers to install drip irrigation or other technologies to conserve water. The Feinstein bill promotes groundwater replenishment by allocating money for groundwater basin replenishment feasibility studies. Groundwater replenishment is a critical strategy in managing California's drought for two reasons: first, as the drought drags on, the agricultural sector is rapidly depleting groundwater supplies. Secondly, groundwater basin replenishment is an efficient and environmentally responsible means of storing water. Groundwater basin replenishment stores water at less cost and with fewer environmental impacts than surface dams and reservoirs.

The Feinstein bill also supports desalination in California. It authorizes \$50 million over five years for feasibility studies and design for sea water and brackish water desalination projects. According to Senator Feinstein's office, the aim of the \$50 million authorization is to improve existing technology, reduce the environmental effects of seawater desalination and develop new technologies to reduce the cost of desalination.

Ultimately what comes out of Congress will likely be a combination of the two bills. Nothing will pass the Senate without the blessing of Sen. Lisa Murkowski (R-AK), chairman of the Senate Energy and Natural Resources Committee. She has not taken a position on either bill. Murkowski held a hearing last week on several water bills aimed at western states, including the two California bills. Both California senators, Feinstein and Barbara Boxer (D-CA), appeared at the hearing to speak in favor of the Feinstein bill and Rep. Valadao appeared in support of his bill. Interestingly, Feinstein and Boxer did not stay to listen to Valadao present his bill. Murkowski indicated that she intends to pass a California drought relief bill this year as part of a package of western water projects and is open to taking the best of each bill.